

Assembly Bill No. 2557

CHAPTER 760

An act to amend Section 3248 of the Civil Code, and to amend Section 7103 of the Public Contract Code, relating to payment bonds.

[Approved by Governor September 26, 2000. Filed
with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, Margett. Payment bonds: public works.

Existing law requires every original contractor who is awarded a public works contract by a state entity involving an expenditure in excess of \$5000 or by any other public entity involving an expenditure in excess of \$25,000 to file a payment bond. Existing law requires that payment bond to be in a sum equal to (1) 100% of the total amount payable by the terms of the contract when that amount does not equal or exceed \$5 million, (2) 50% of the total amount payable when that amount is not less than \$5 million and not more than \$10 million, or (3) 25% of the total amount payable when that amount exceeds \$10 million.

This bill would delete those provisions and instead require that the payment bond be in a sum equal to 100% of the total amount payable by the terms of the contract for all public works contracts.

The people of the State of California do enact as follows:

SECTION 1. Section 3248 of the Civil Code is amended to read:

3248. In order to be approved, the payment bond shall satisfy all of the following requirements:

(a) The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract.

(b) The bond shall provide that if the original contractor or a subcontractor fails to pay (1) any of the persons named in Section 3181, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the sureties will pay for the same, and also, in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court. The original contractor may require of the subcontractors a bond to indemnify the original contractor for any loss sustained by

the original contractor because of any default by the subcontractors under this section.

(c) The bond shall, by its terms, inure to the benefit of any of the persons named in Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

(d) The bond shall be in the form of a bond and not a deposit in lieu of a bond.

SEC. 2. Section 7103 of the Public Contract Code is amended to read:

7103. (a) Every original contractor to who is awarded a contract by a state entity, as defined in subdivision (d), involving an expenditure in excess of five thousand dollars (\$5,000) for any public work shall, before entering up the performance of the work, file a payment bond with and approved by the officer or state entity by who the contract was awarded. The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract.

The state entity shall state in its call for bids for any contract that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized contract which supplements the contract for which the payment bond was filed if the requirement of a new bond is waived by the state entity.

(c) For purposes of this section, providers of architectural, engineering and land surveying services pursuant to a contract with a state entity for a public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b).

(d) For purposes of this section, “state entity” means every state office department, division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by the provisions of Section 3247 of the Civil Code.

(e) For purposes of this section, “public work” includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind.

